

essary, to complete a pilot project under this subsection.

(f) DUTY CALL DEFINED.—In this section the term “duty call” means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.

(Added Pub. L. 110-432, div. A, title I, §108(e)(1), Oct. 16, 2008, 122 Stat. 4864.)

#### REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsecs. (b), (d)(3), and (e)(1), is the date of enactment of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

### CHAPTER 213—PENALTIES

#### SUBCHAPTER I—CIVIL PENALTIES

Sec.

- 21301. Chapter 201 general violations.
- 21302. Chapter 201 accident and incident violations and chapter 203-209 violations.
- 21303. Chapter 211 violations.
- 21304. Willfulness requirement for penalties against individuals.

#### SUBCHAPTER II—CRIMINAL PENALTIES

- 21311. Records and reports.

#### SUBCHAPTER I—CIVIL PENALTIES

### § 21301. Chapter 201 general violations

(a) PENALTY.—(1) A person may not fail to comply with section 20160 or with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title. Subject to section 21304 of this title, a person violating section 20160 of this title or a regulation prescribed or order issued by the Secretary under chapter 201 is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The Secretary shall impose a civil penalty for a violation of section 20160 of this title. The amount of the penalty shall be at least \$500 but not more than \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than \$500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

- (A) the nature, circumstances, extent, and gravity of the violation;
- (B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and
- (C) other matters that justice requires.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or com-

promised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 891; Pub. L. 104-287, §5(53), Oct. 11, 1996, 110 Stat. 3393; Pub. L. 110-432, div. A, title II, §204(d), title III, §302(a), Oct. 16, 2008, 122 Stat. 4871, 4878.)

#### HISTORICAL AND REVISION NOTES

##### PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
21301(a)(1) ..	45:438(a).	Oct. 16, 1970, Pub. L. 91-458, §209(a), 84 Stat. 975; restated Jan. 14, 1983, Pub. L. 97-468, §706, 96 Stat. 2581; June 22, 1988, Pub. L. 100-342, §3(a)(1), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102-365, §9(a)(1), 106 Stat. 977.
	45:438(c) (1st, 3d sentences).	Oct. 16, 1970, Pub. L. 91-458, §209(c) (1st, 3d, 5th-8th sentences), 84 Stat. 975; June 22, 1988, Pub. L. 100-342, §3(a)(3)(A), (C), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102-365, §4(c)(1), 106 Stat. 974.
21301(a)(2) ..	45:438(b) (related to rules, regulations, orders, or standards issued under this subchapter).	Oct. 16, 1970, Pub. L. 91-458, §209(b) (related to rules, regulations, orders, or standards issued under this title), 84 Stat. 975; Jan. 3, 1975, Pub. L. 93-633, §204(a), 88 Stat. 2165; June 22, 1988, Pub. L. 100-342, §3(a)(2), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102-365, §4(a)(1), 106 Stat. 973.
21301(a)(3) ..	45:438(c) (5th, 6th sentences).	
21301(b) .....	45:438(c) (7th sentence).	
21301(c) .....	45:438(c) (8th sentence).	

In subsection (a), the words “impose” and “imposed” are substituted for “assessed”, for consistency in the revised title.

In subsection (a)(1), the first 2 sentences are substituted for 45:438(a) and (c) (1st sentence) for consistency in the revised title and to eliminate unnecessary words. The words “(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The word “shall” in 45:438(c) (1st sentence) is retained from the source provisions. For a discussion of whether the authority of the Secretary of Transportation to impose a penalty is mandatory or permissive, see *Railway Labor Executives’ Ass’n v. Dole*, 760 F.2d 1021, 1024, 1025 (9th Cir. 1985); H.R. Conf. Rept. No. 100-637, 100th Cong., 2d Sess., p. 20; 134 Cong. Rec. H3470, May 23, 1988 (daily ed.); 134 Cong. Rec. S7510, June 9, 1988 (daily ed.). See also 134 Cong. Rec. E1946, June 10, 1988 (daily ed.). For an extended discussion of FRA’s prosecutorial discretion, see *Nationwide Rail Safety: Hearing Before the Subcommittee on Transportation, Tourism, and Hazardous Materials of the House Energy and Commerce Committee*, 100th Cong., 1st Sess., pp. 54-65 (1987). See also section 6 of this bill that provides that this bill restates, without substantive change, the provisions of law replaced by this bill, and that this bill may not be construed as making a substantive change in the law restated. Therefore, the word “shall” in this subsection has the same meaning it has under existing

law. The words “A separate violation” are substituted for “a separate offense” for consistency.

In subsection (a)(3), the words “may compromise the amount . . . to not less than \$500” are substituted for “may, however, be compromised . . . for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section” for clarity and to eliminate unnecessary words. In clause (B), the words “prior or subsequent” are omitted as unnecessary.

In subsection (c), the words “deposited in” are substituted for “covered into” for consistency in the revised title and with other titles of the United States Code.

#### PUB. L. 104-287

This amends 49:21301(a)(1) to clarify the restatement of 45:438(a) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 891).

#### AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-432, §204(d)(1), inserted “with section 20160 or” after “comply” and “section 20160 of this title or” after “violating”.

Subsec. (a)(2). Pub. L. 110-432, §302(a), substituted “\$25,000.” for “\$10,000.” and “\$100,000.” for “\$20,000.”

Pub. L. 110-432, §204(d)(2), inserted “The Secretary shall impose a civil penalty for a violation of section 20160 of this title.” after first sentence.

1996—Subsec. (a)(1). Pub. L. 104-287, §5(53)(B), substituted “Secretary under chapter 201 is liable” for “Secretary of Transportation under chapter 201 of this title is liable”.

Pub. L. 104-287, §5(53)(A), inserted “A person may not fail to comply with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title.” before “Subject to”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-287 effective July 5, 1994, see section 8(1) of Pub. L. 104-287, set out as a note under section 5303 of this title.

### § 21302. Chapter 201 accident and incident violations and chapter 203-209 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203-209 of this title or a regulation or requirement prescribed or order issued under chapters 203-209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 892; Pub. L. 110-432, div. A, title III, §302(b), Oct. 16, 2008, 122 Stat. 4878.)

#### HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
21302 .....	45:6 (1st sentence words before 23d comma and between 24th comma and proviso, 2d sentence words before 2d comma, last sentence).	Mar. 2, 1893, ch. 196, §6 (1st sentence words before 23d comma and between 24th comma and proviso, 2d sentence words before 2d comma, last sentence), 27 Stat. 532; restated Apr. 1, 1896, ch. 87, 29 Stat. 85; Aug. 14, 1957, Pub. L. 85-135, §1(1), 71 Stat. 352; July 8, 1976, Pub. L. 94-348, §3(a), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, §7(a), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96-423, §8(b), 94 Stat. 1814; June 22, 1988, Pub. L. 100-342, §13(1)(F), 102 Stat. 630; Sept. 3, 1992, Pub. L. 102-365, §§4(a)(1), (c)(3), 9(a)(3), 106 Stat. 973, 974, 977.
	45:8 (words before 16th comma).	Mar. 2, 1903, ch. 976, §1 (words before 23d comma), 32 Stat. 943; June 22, 1988, Pub. L. 100-342, §13(2)(A), 102 Stat. 631.
	45:9 (last sentence).	Mar. 2, 1903, ch. 976, 32 Stat. 943, §2 (last sentence); added Apr. 11, 1958, Pub. L. 85-375, §1(b)(3), 72 Stat. 86.
	45:10 (words after 19th comma).	Mar. 2, 1903, ch. 976, §3 (last sentence words after semicolon), 32 Stat. 944.
	45:12 (1st sentence words after semicolon).	Apr. 14, 1910, ch. 160, §3 (1st sentence words between semicolon and proviso), 36 Stat. 298.
	45:13 (1st sentence words before last comma, 2d sentence words before proviso, last sentence).	Apr. 14, 1910, ch. 160, §4 (1st sentence words before last comma, 2d sentence words before proviso, last sentence), 36 Stat. 299; Aug. 14, 1957, Pub. L. 85-135, §1(2), 71 Stat. 352; July 8, 1976, Pub. L. 94-348, §3(b), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, §7(b), 92 Stat. 2461; June 22, 1988, Pub. L. 100-342, §13(3) (C)(i)-(iv), 102 Stat. 632; Sept. 3, 1992, Pub. L. 102-365, §§4(a)(1), (c)(4), 9(a)(5), 106 Stat. 973, 974, 978.
	45:14 (words after semicolon).	Apr. 14, 1910, ch. 160, §5 (words after semicolon), 36 Stat. 299.
	45:30 (1st sentence related to 45:34).	Mar. 4, 1915, ch. 169, §2 (1st sentence related to §9 of Act of Feb. 17, 1911), 38 Stat. 1192; Apr. 22, 1940, ch. 124, §2, 54 Stat. 148; Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 79 Stat. 1320.

## HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
	45:34 (1st sentence words before last comma, 2d, last sentences).	Feb. 17, 1911, ch. 103, § 9 (1st sentence words before last comma, 2d, last sentences), 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1 (related to § 9 of Act of Feb. 17, 1911), 54 Stat. 148; Aug. 14, 1957, Pub. L. 85-135, § 3, 71 Stat. 352; Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 79 Stat. 1320; July 8, 1976, Pub. L. 94-348, § 3(c), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, § 7(c), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96-423, § 8(c), 94 Stat. 1814; June 22, 1988, Pub. L. 100-342, § 14(7)(A), 102 Stat. 633; Sept. 3, 1992, Pub. L. 102-365, § 4(a)(1), (c)(7), 9(a)(8), 106 Stat. 973, 975, 978.
	45:43 (1st sentence words before last comma, 2d sentence, 3d sentence words before 5th comma, last sentence).	May 6, 1910, ch. 208, § 7 (1st sentence words before last comma, 2d sentence, 3d sentence words before 5th comma, last sentence), 36 Stat. 351; Sept. 13, 1960, Pub. L. 86-762, § 3, 74 Stat. 904; restated June 22, 1988, Pub. L. 100-342, § 15(4), 102 Stat. 634; Sept. 3, 1992, Pub. L. 102-365, § 4(a)(1), (c)(5), 9(a)(6), 106 Stat. 973, 974, 978.
	45:438(b) (related to 45:39).	Oct. 16, 1970, Pub. L. 91-458, § 209(b) (related to § 2 of Act of May 6, 1910), 84 Stat. 975; Jan. 3, 1975, Pub. L. 93-633, § 204(a), 88 Stat. 2165; June 22, 1988, Pub. L. 100-342, § 3(a)(2), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102-365, § 4(a)(1), 106 Stat. 973.
	49 App.:26(h) (1st sentence words before last comma, 2d, 3d sentences, 4th sentence words before last comma, last sentence).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 25(h) (1st sentence words before last comma, 2d, 3d sentences, 4th sentence words before last comma, last sentence); added Feb. 28, 1920, ch. 91, § 441, 41 Stat. 498; restated Aug. 26, 1937, ch. 818, 50 Stat. 837; Sept. 18, 1940, ch. 722, § 14(b), 54 Stat. 919; July 8, 1976, Pub. L. 94-348, § 3(d), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, § 7(d), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96-423, § 8(d), 94 Stat. 1814; June 22, 1988, Pub. L. 100-342, § 17(7), (8), 102 Stat. 636; Sept. 3, 1992, Pub. L. 102-365, § 4(a)(1), (c)(6), 9(a)(7), 106 Stat. 973, 974, 978.
	49 App.:1655(e)(1)(A), (C), (E)-(G), (K), (6)(A).	Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(A), (C), (E)-(G), (K), (6)(A), 80 Stat. 939.

In subsection (a)(1), the words “(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The words “violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation” are substituted for “violating . . . any rule, regulation, order, or standard issued under . . . the Federal Railroad Safety Act of 1970 [45 U.S.C. 431 et seq.] pertaining to accident reporting or investigations” in 45:43, and the words “violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209” are substituted for various language in the source provisions, for clarity, for consistency in this section, and to eliminate unnecessary words. The words “liable to the

United States Government for a civil penalty” are substituted for “liable to a penalty” for clarity. The text of 45:438(b) (related to 45:39) is omitted as covered by 45:43.

In subsection (a)(2), the words “The Secretary of Transportation imposes a civil penalty under this subsection” are substituted for “to be assessed by the Secretary of Transportation” in 45:6, “Such penalty shall be assessed by the Secretary of Transportation” in 45:13, the text of 45:10 (words after 7th comma) and 14 (words after semicolon), and “in such amount . . . as the Secretary of Transportation deems reasonable” in 45:34 and 43 and 49 App.:26(h) for clarity and to eliminate unnecessary words. The words “per violation” are omitted as surplus.

In subsections (a)(3) and (b), the words “Attorney General” are substituted for “United States attorney”, “such attorneys, subject to the direction of the Attorney General”, “proper United States attorney” and “proper United States attorneys” because of 28:509.

In subsection (a)(3), the words “section 3711 of title 31” are substituted for “the Federal Claims Collection Act of 1966” and “sections 3711 and 3716 to 3718 of title 31” because the Federal Claims Collection Act of 1966 has been repealed and reenacted as part of title 31 and penalties are compromised under 31:3711. In clause (B), the words “prior or subsequent” are omitted as unnecessary.

In subsection (a)(4), the words “the Secretary shall refer the matter to the Attorney General for collection” are substituted for “recovered in a suit or suits to be brought by” for clarity. The words “and it shall also be the duty of the Secretary of Transportation to lodge with . . . information of any such violations as may come to his knowledge” and “and it shall be the duty of the director of locomotive inspection to give information . . . of all violations coming to his knowledge” are omitted as obsolete.

In subsection (b), the words “The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section” are substituted for “and it shall be the duty of such United States attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred” in 45:6, and for “It shall be the duty of such attorneys to bring such suits upon duly verified information being lodged with them showing such violations having occurred” in 49 App.:26, for clarity and consistency in this section and with other provisions of the revised title.

## AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-432 substituted “\$25,000.” for “\$10,000.” and “\$100,000.” for “\$20,000.”

## § 21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title, including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008), or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to

individuals, or has caused death or injury, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 892; Pub. L. 103-440, title II, §204, Nov. 2, 1994, 108 Stat. 4620; Pub. L. 104-287, §5(54), Oct. 11, 1996, 110 Stat. 3393; Pub. L. 110-432, div. A, title I, §108(e)(2)(B), title III, §302(c), Oct. 16, 2008, 122 Stat. 4866, 4878.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
21303 .....	45:63a(d) (related to 45:64a).	Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §3A(d) (related to §5); added July 8, 1976, Pub. L. 94-348, §4(d), 90 Stat. 819; June 22, 1988, Pub. L. 100-342, §16(4), 102 Stat. 635.
	45:64a(a)(1) (1st sentence words before last comma, 2d-4th sentences, 5th sentence words before last comma, last sentence).	Mar. 4, 1907, ch. 2939, §5(a)(1) (1st sentence words before last comma, 2d-4th sentences, 5th sentence words before last comma, last sentence), 34 Stat. 1417; Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 464; July 8, 1976, Pub. L. 94-348, §4(e), 90 Stat. 819; Oct. 10, 1980, Pub. L. 96-423, §12, 94 Stat. 1816; restated June 22, 1988, Pub. L. 100-342, §16(6)(A), 102 Stat. 635; Sept. 3, 1992, Pub. L. 102-365, §§4(a)(2), (c)(2), 9(a)(2), 106 Stat. 973, 974, 977.

HISTORICAL AND REVISION NOTES—CONTINUED  
PUB. L. 103-272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
	45:64a(a)(2).	Mar. 4, 1907, ch. 2939, §5(a)(2), 34 Stat. 1417; Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 464; July 8, 1976, Pub. L. 94-348, §4(e), 90 Stat. 819; restated Oct. 10, 1980, Pub. L. 96-423, §12, 94 Stat. 1816; June 22, 1988, Pub. L. 100-342, §16(6)(B), 102 Stat. 635.
	45:64a(b).	Mar. 4, 1907, ch. 2939, §5(b), 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 464.
	45:64a(c).	Mar. 4, 1907, ch. 2939, §5(c), 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 464; June 22, 1988, Pub. L. 100-342, §16(6)(C), 102 Stat. 635.

In this section, the words “Attorney General” are substituted for “United States attorney” because of 28:509. The words “civil action” are substituted for “suit or suits”, “action”, and “prosecutions” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (a)(1), the words “(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The words “violating chapter 211 of this title” are substituted for “that requires or permits any employee to go, be, or remain on duty in violation of section 62, section 63, or section 63a of this title, or that violates any other provision of this chapter” to eliminate unnecessary words. The words “to the United States Government for a civil penalty” are substituted for “for a penalty” for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(2), the words “The Secretary of Transportation imposes a civil penalty under this subsection” are substituted for “as the Secretary of Transportation deems reasonable” for clarity and consistency.

In subsection (a)(3), the words “section 3711 of title 31” are substituted for “sections 3711 and 3716 to 3718 of title 31” because penalties are compromised under 31:3711. In clause (B), the words “prior or subsequent” are omitted as unnecessary.

In subsection (a)(4), the words “the Secretary shall refer the matter to the Attorney General for collection” are substituted for “recovered in a suit or suits to be brought by” for clarity. The text of 45:64a(b) is omitted as obsolete.

In subsection (b)(1), the words “The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General” are substituted for “It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged with him” for clarity and consistency in this section and with other provisions of the revised title.

In subsection (c), the words “any proceeding” are substituted for “all prosecutions” for consistency in the revised title.

PUB. L. 104-287

This amends 49:21303(a)(1) to correct a grammatical error.

## REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a)(1), is the date of enactment of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

## AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-432, § 108(e)(2)(B), inserted “including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008),” after “chapter 211 of this title.”.

Subsec. (a)(2). Pub. L. 110-432, § 302(c), substituted “\$25,000.” for “\$10,000.” and “\$100,000.” for “\$20,000.”

1996—Subsec. (a)(1). Pub. L. 104-287 inserted a comma after “chapter 211 of this title”.

1994—Subsec. (a)(1). Pub. L. 103-440 inserted “or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title,” after “chapter 211 of this title”.

### § 21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 893.)

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
21304 .....	45:6 (1st sentence words between 23d and 24th commas, 2d sentence words after 2d comma, 3d sentence).	Mar. 2, 1893, ch. 196, § 6 (1st sentence words between 23d and 24th commas, 2d sentence words after 2d comma, 3d sentence), 27 Stat. 532; restated June 22, 1988, Pub. L. 100-342, § 13(1)(F), 102 Stat. 630; Sept. 3, 1992, Pub. L. 102-365, § 9(a)(3), 106 Stat. 977.
	45:13 (1st sentence words after last comma, 3d, 4th sentences).	Apr. 14, 1910, ch. 160, § 4 (1st sentence words after last comma, 3d, 4th sentences), 36 Stat. 299; June 22, 1988, Pub. L. 100-342, § 13(3)(C)(iii), (v), 102 Stat. 632.
	45:34 (1st sentence words after last comma, 3d, 4th sentences).	Feb. 17, 1911, ch. 103, § 9 (1st sentence words after last comma, 3d, 4th sentences), 36 Stat. 916; June 22, 1988, Pub. L. 100-342, § 14(7), 102 Stat. 633.
	45:43 (1st sentence words after last comma, 3d sentence words after 5th comma, 4th sentence).	May 6, 1910, ch. 208, § 7 (1st sentence words after last comma, 3d sentence words after 5th comma, 4th sentence), 36 Stat. 351; Sept. 13, 1960, Pub. L. 86-762, § 3, 74 Stat. 904; restated June 22, 1988, Pub. L. 100-342, § 15(4), 102 Stat. 634.
	45:64a(a)(1) (1st sentence words after last comma, 5th sentence words after last comma, 6th sentence).	Mar. 4, 1907, ch. 2939, § 5(a)(1) (1st sentence words after last comma, 5th sentence words after last comma, 6th sentence), 34 Stat. 1417; restated June 22, 1988, Pub. L. 100-342, § 16(6)(A), 102 Stat. 635.
	45:438(c) (2d, 9th, last sentences).	Oct. 16, 1970, Pub. L. 91-458, § 209(c) (2d, 8th, last sentences), 84 Stat. 975; June 22, 1988, Pub. L. 100-342, § 3(a)(3)(A), (C), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102-365, § 4(c)(1), 106 Stat. 974.

## HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
	49 App.:26(h) (1st sentence words after last comma, 4th sentence words after last comma, 5th sentence).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 25(h) (1st sentence words after last comma, 4th sentence words after last comma, 5th sentence); added Feb. 28, 1920, ch. 91, § 441, 41 Stat. 498; restated Aug. 26, 1937, ch. 818, 50 Stat. 837; Sept. 18, 1940, ch. 722, § 14(b), 54 Stat. 919; June 22, 1988, Pub. L. 100-342, § 17(7), 102 Stat. 636.

The word “official” is added the 2d time it appears for consistency in this section.

## SUBCHAPTER II—CRIMINAL PENALTIES

### § 21311. Records and reports

(a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by any other means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing a report in violation of section 20901 of this title shall be fined not more than \$2,500. A separate violation occurs for each day the violation continues.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 893; Pub. L. 110-432, div. A, title III, § 310, Oct. 16, 2008, 122 Stat. 4882.)

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
21311(a) .....	45:438(e).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, § 209(e); added Oct. 10, 1980, Pub. L. 96-423, § 7, 94 Stat. 1814.
21311(b) .....	45:39 (related to fine).	May 6, 1910, ch. 208, § 2 (related to fine), 36 Stat. 351; Jan. 3, 1975, Pub. L. 93-633, § 204(b), 88 Stat. 2166; June 22, 1988, Pub. L. 100-342, § 15(2), 102 Stat. 634; Sept. 3, 1992, Pub. L. 102-365, § 4(a)(3), 106 Stat. 973.

In subsection (a), before clause (1), the words “fined under title 18” are substituted for “fined not more than \$5,000” for consistency with title 18. In clause (1), the word “prepared” is omitted as surplus. In clause (4), the word “prepares” is omitted as surplus.

In subsection (b), the words “shall be deemed guilty of a misdemeanor” are omitted for consistency with title 18. The words “upon conviction thereof by a court of competent jurisdiction” and “punished by a” are omitted as surplus.

## AMENDMENTS

2008—Subsec. (b). Pub. L. 110-432 amended subsec. (b) generally. Prior to amendment, text read as follows: “A railroad carrier not filing the report required by sec-

tion 20901 of this title shall be fined not more than \$500 for each violation and not more than \$500 for each day during which the report is overdue.”

## PART B—ASSISTANCE

### CHAPTER 221—LOCAL RAIL FREIGHT ASSISTANCE

Sec.	
22101.	Financial assistance for State projects.
22102.	Eligibility.
22103.	Applications.
22104.	State rail plan financing.
22105.	Sharing project costs.
22106.	Limitations on financial assistance.
22107.	Records, audits, and information.
22108.	Authorization of appropriations.

#### § 22101. Financial assistance for State projects

(a) GENERAL.—The Secretary of Transportation shall provide financial assistance to a State, as provided under this chapter, for a rail freight assistance project of the State when a rail carrier subject to part A of subtitle IV of this title maintains a rail line in the State. The assistance is for the cost of—

(1) acquiring, in any way the State considers appropriate, an interest in a rail line or rail property to maintain existing, or to provide future, rail freight transportation, but only if the Surface Transportation Board has authorized, or exempted from the requirements of that authorization, the abandonment of, or the discontinuance of rail transportation on, the rail line related to the project;

(2) improving and rehabilitating rail property on a rail line to the extent necessary to allow adequate and efficient rail freight transportation on the line, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year; and

(3) building rail or rail-related facilities (including new connections between at least 2 existing rail lines, intermodal freight terminals, sidings, bridges, and relocation of existing lines) to improve the quality and efficiency of the rail freight transportation, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

(b) CALCULATING COST-BENEFIT RATIO.—The Secretary shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under this chapter. In establishing the methodology, the Secretary shall consider the need for equitable treatment of different regions of the United States and different commodities transported by rail. The establishment of the methodology is committed to the discretion of the Secretary.

(c) CONDITIONS.—(1) Assistance for a project shall be provided under this chapter only if—

(A) a rail carrier certifies that the rail line related to the project carried more than 20 carloads a mile during the most recent year during which transportation was provided by the carrier on the line; and

(B) the ratio of benefits to costs for the project, as calculated using the methodology

established under subsection (b) of this section, is more than 1.0.

(2) If the rail carrier that provided the transportation on the rail line is no longer in existence, the applicant for the project shall provide the information required by the certification under paragraph (1)(A) of this subsection in the way the Secretary prescribes.

(3) The Secretary may waive the requirement of paragraph (1)(A) or (2) of this subsection if the Secretary—

(A) decides that the rail line has contractual guarantees of at least 40 carloads a mile for each of the first 2 years of operation of the proposed project; and

(B) finds that there is a reasonable expectation that the contractual guarantees will be fulfilled.

(d) LIMITATIONS ON AMOUNTS.—A State may not receive more than 15 percent of the amounts provided in a fiscal year under this chapter. Not more than 20 percent of the amounts available under this chapter may be provided in a fiscal year for any one project.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 894; Pub. L. 104-88, title III, §308(f)(1), (2), Dec. 29, 1995, 109 Stat. 947.)

#### HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
22101(a) .....	49 App.1654(b).	Oct. 15, 1966, Pub. L. 89-670, 80 Stat. 931, §5(b), (c), (n)-(p); added Feb. 5, 1976, Pub. L. 94-210, §803, 90 Stat. 130; Nov. 8, 1978, Pub. L. 95-607, §§102-106(a), 107-109(a), 92 Stat. 3059, 3062; Oct. 12, 1979, Pub. L. 96-86, §115(b), 93 Stat. 662; Aug. 13, 1981, Pub. L. 97-35, §§1191, 1192, 95 Stat. 699; Jan. 14, 1983, Pub. L. 97-468, §501, 96 Stat. 2551; Apr. 7, 1986, Pub. L. 99-272, §4018, 100 Stat. 111; restated Dec. 11, 1989, Pub. L. 101-213, §2(a), (c), 103 Stat. 1843, 1844, 1848.
22101(b) .....	49 App.1654(p).	
22101(c) .....	49 App.1654(n).	
22101(d) .....	49 App.1654(c).	
	49 App.1654(o).	

In this chapter, the word “transportation” is substituted for “service” for consistency in the revised title.

In subsection (a), before clause (1), the words “when a rail carrier . . . maintains a rail line in the State” are substituted for “As used in this section, the term ‘State’ means any State in which a rail carrier providing transportation . . . maintains any line of railroad” because of the restatement. The words “the jurisdiction of the Interstate Commerce Commission” are omitted as unnecessary because of 49:ch. 105. In clause (1), the words “by purchase, lease” are omitted as being included in “in any way the State considers appropriate” to eliminate unnecessary words.

In subsection (b), the words “no later than July 1, 1990” are omitted as executed.

In subsection (c)(1), before clause (A), the words “Assistance for a project shall be provided under this chapter only if” are substituted for “No project shall be provided rail freight assistance under this section unless” because of the restatement.

In subsection (c)(2), the words “If the rail carrier that provided the transportation on the rail line” are substituted for “In a case where the railroad”, and the words “information required by the certification under